



PTO/SB/61 (09-06)

Approved for use through 03/31/2007. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|-----------------------------------------------|
| <b>PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT<br/>ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)</b>                                                                                                                                                                                                                                              |                                      | Docket Number (Optional)<br><br><b>1310-2</b> |
| First Named Inventor:                                                                                                                                                                                                                                                                                                                                 | <b>Joseph E. Porcelli</b>            |                                               |
| Application Number:                                                                                                                                                                                                                                                                                                                                   | <b>09/356,771</b>                    |                                               |
| Filed:                                                                                                                                                                                                                                                                                                                                                | <b>July 16, 1999</b>                 |                                               |
| Title:                                                                                                                                                                                                                                                                                                                                                | <b>CAR AND TRUCK BEVERAGE HOLDER</b> |                                               |
| <p>Attention: Office of Petitions<br/><b>Mail Stop Petition</b><br/>Commissioner for Patents<br/>P.O. Box 1450<br/>Alexandria, VA 22313-1450</p>                                                                                                                                                                                                      |                                      |                                               |
| <p>NOTE: If information or assistance is needed in completing this form, please contact<br/>Petitions Information at (571) 272-3282.</p>                                                                                                                                                                                                              |                                      |                                               |
| <p>The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.</p> |                                      |                                               |
| <p><b>APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.</b></p>                                                                                                                                                                                                                                                                             |                                      |                                               |
| <p>NOTE: A grantable petition requires the following items:</p>                                                                                                                                                                                                                                                                                       |                                      |                                               |
| <p>(1) Petition fee.<br/>(2) Reply and/or issue fee.<br/>(3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995, and for all design applications; and<br/>(4) Adequate showing of the cause of unavoidable delay.</p>                                                                |                                      |                                               |
| <p>1. Petition fee</p>                                                                                                                                                                                                                                                                                                                                |                                      |                                               |
| <p><input checked="" type="checkbox"/> Small entity – fee \$ <u>250.00</u> (37 CFR 1.17(l)). Applicant claims small entity status.<br/>See 37 CFR 1.27.</p>                                                                                                                                                                                           |                                      |                                               |
| <p><input type="checkbox"/> Other than small entity – fee \$ _____ (37 CFR 1.17(l)).</p>                                                                                                                                                                                                                                                              |                                      |                                               |
| <p>2. Reply and/or fee</p>                                                                                                                                                                                                                                                                                                                            |                                      |                                               |
| <p>A The reply and/or fee to the above-noted Office action in the form of<br/>_____ (identify the type of reply):</p>                                                                                                                                                                                                                                 |                                      |                                               |
| <p><input checked="" type="checkbox"/> has been filed previously on <u>September 7, 2004</u>.</p>                                                                                                                                                                                                                                                     |                                      |                                               |
| <p><input checked="" type="checkbox"/> is enclosed herewith. (New transmittal form for RCE)</p>                                                                                                                                                                                                                                                       |                                      |                                               |
| <p>B The issue fee of \$ _____</p>                                                                                                                                                                                                                                                                                                                    |                                      |                                               |
| <p><input type="checkbox"/> has been filed previously on _____</p>                                                                                                                                                                                                                                                                                    |                                      |                                               |
| <p><input type="checkbox"/> is enclosed herewith.</p>                                                                                                                                                                                                                                                                                                 |                                      |                                               |

[Page 1 of 3]

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

03/09/2007 RMEBRAHT 00000019 09356771  
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~~PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 CFR 1.137(a)~~

## 3. Terminal disclaimer with disclaimer fee

- Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

## 4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

March 5, 2007

Date

27,638

Registration Number, if applicable

516-431-1177

Telephone Number

\_\_\_\_\_  
 Signature  
 Thomas M. Galgano  
 Typed or printed name  
 20 W. Park Avenue - Suite 204  
 Address  
 Long Beach, New York 11561  
 Address

Enclosure  Fee Payment

- Reply
- Terminal Disclaimer Form
- Additional sheets containing statements establishing unavoidable delay
- 

**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this correspondence is being:

deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

March 5, 2007

Date

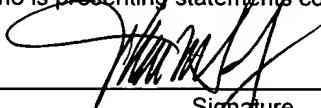
Signature

Thomas M. Galgano

Typed or printed name of person signing certificate

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.



Signature

March 5, 2007

Thomas M. Galgano

Date

Typed or printed name

27,638

Registration Number, if applicable

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

See attached Declaration In Support Of Petition For Revival  
Of An Application For Patent Abandonend Unavoidably Under  
37 CFR 1.137(A)

(Please attach additional sheets if additional space is needed.)

Please type a plus sign (+) in this box

MAR 08 2007

Approved for use through 10/31/2002 OMB 0651-0032

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| <b>UTILITY<br/>PATENT APPLICATION<br/>TRANSMITTAL</b><br><i>(Only for new nonprovisional application under<br/>37 CFR 1.53(b))</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                           | <b>Attorney/Agent No.:</b><br><b>First Named Inventor:</b><br><b>Title:</b><br><b>Express Mail Label No.:</b>                                                                                                                                                                                                                                                                                                                                                                                        | <b>1310-2</b><br><b>Joseph E. PORCELLI</b><br><b>CAR AND TRUCK BEVERAGE HOLDER</b><br><b>EV 235846803 US</b> |
| <b>APPLICATION ELEMENTS</b><br><i>See MPEP chapter 6000 concerning design patent application contents</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                           | <b>ADDRESS TO:</b> Commissioner for Patents<br>P.O. Box 1450<br>Alexandria, VA 22313-1450                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                              |
| 1. <input checked="" type="checkbox"/> Fee Transmittal Form (e.g. PTO/SB/17)<br><i>(submit an original, and a duplicate for fee processing)</i><br>2. <input checked="" type="checkbox"/> Applicant claims small entity status<br><i>See 37 CFR 1.27</i><br>3. <input type="checkbox"/> Specification [Total Pages _____]<br><i>(preferred arrangement set forth below, MPEP 1503.01)</i><br>- Descriptive Title of the Invention<br>- Cross References to Related Applications<br>- Statement Regarding Fed sponsored R&D<br>- Reference to sequence listing, a table, or a computer program listing appendix<br>- Background of the Invention<br>- Brief Summary of the Invention<br>- Brief Description of the Drawings ( <i>if filed</i> )<br>- Detailed Description<br>- Claim(s)<br>- Abstract of the Disclosure<br>4. <input type="checkbox"/> Drawings(s) (37 CFR 1.152) [Total Sheets _____]<br>5. <input type="checkbox"/> Oath or Declaration [Total Pages _____]<br>a. <input type="checkbox"/> Newly executed (original or copy)<br>b. <input type="checkbox"/> Copy from a prior application (37 CFR 1.63(d))<br>a. <input type="checkbox"/> <u>DELETION OF INVENTOR(S)</u><br><i>Signed statement attached deleting inventor(s) named in the prior appl., see 37 CFR 1.63(d)(2) and 1.33(b)</i><br>6. <input type="checkbox"/> Application Data Sheet. See 37 CFR 1.76 |                           | 7. <input type="checkbox"/> CD-ROM or CD-R in duplicate, large table or Computer Program (Appendix)<br>8. <input type="checkbox"/> Nucleotide and/or Amino Acid Sequence Submission (if applicable, all necessary)<br>a. <input type="checkbox"/> Computer Readable Form (CRF)<br>b. Specification Sequence Listing on<br>i. <input type="checkbox"/> CD-ROM or CD-R (2 copies or<br>ii. <input type="checkbox"/> paper<br>c. <input type="checkbox"/> Statements verifying identity of above copies |                                                                                                              |
| <b>ACCOMPANYING APPLICATION PARTS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                              |
| 9. <input type="checkbox"/> Assignment Papers (cover sheet & document(s))<br>10. <input type="checkbox"/> 37 CFR 3.73(b) Statement <input type="checkbox"/> Power of Attorney<br>11. <input type="checkbox"/> English Translation Document ( <i>if applicable</i> )<br>12. <input type="checkbox"/> Information Disclosure Statement (IDS) PTO-1449 <input type="checkbox"/> Copies of IDS Citations<br>13. <input checked="" type="checkbox"/> Preliminary Amendment<br>14. <input checked="" type="checkbox"/> Return Receipt Postcard (MPEP 503)<br><i>(Should be specifically itemized)</i><br>15. <input type="checkbox"/> Certified Copy of Priority Document(s)<br><i>(if foreign priority is claimed)</i><br>16. <input type="checkbox"/> Nonpublication Request under 35 U.S.C. 122<br>(b)(2)(B)(i). Applicaht must attach form PTO/SB/35 or its equivalent.<br>17. <input checked="" type="checkbox"/> Other: ..PTO-2038 Form for 3-mo EOT (\$475.00)                                                                                                                                                                                                                                                                                                                                                                                                                       |                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                              |
| 18. If a <b>CONTINUING APPLICATION</b> , check appropriate box, and supply the requisite information below and in a preliminary amendment, or in an Application Data Sheet under 37 CFR 1.76:<br><input checked="" type="checkbox"/> Continuation <input type="checkbox"/> Divisional <input type="checkbox"/> Continuation-in-part (CIP)    of prior application No. <u>09/356,771</u><br>Prior application information: Examiner: <u>NARSCHICA S. MORRISON</u> Group Art Unit: <u>3632</u><br>For <b>CONTINUATION OR DIVISIONAL APPS</b> only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                              |
| <b>19. CORRESPONDENCE ADDRESS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                              |
| <input type="checkbox"/> Customer Number or Bar Code Label <i>(Insert Customer No. or Attach bar code label here)</i> or <input checked="" type="checkbox"/> Correspondence address below                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                              |
| Name                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Galgano & Burke           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                              |
| Address                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 300 Rabro Drive, Suite 35 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                              |
| City                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Hauppauge                 | State                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | New York                                                                                                     |
| Country                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | USA                       | Telephone                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 631-582-6161                                                                                                 |
| Name (Print/Type)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Thomas M. Galgano         | Registration No. (Attorney/Agent): 27,638                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                              |
| Signature                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Date: September 7, 2004   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                              |

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# FEE TRANSMISSION FOR FY 2003

Effective 01/01/200. Patent fees are subject to annual revision

Applicant claims small entity status.  
See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT \$860.00

## Application Number:

Complete If Known

09/356,771

Filing Date:

September 7, 2004

First Named Inventor:

Joseph E. PORCELLI

Examiner Name:

Narschica S. Morrison

Group Art Unit:

3632

Attorney Docket No.:

1310-2

## METHOD OF PAYMENT (check all that apply)

Check  Credit Card  Money Order  Other  None

 Deposit Account:

Deposit Account Number: 07-0130

Deposit Account Name: Galgano &amp; Burke

## The Commissioner is authorized to: (check all that apply)

- Charge fee(s) indicated below  
 Credit any overpayments  
 Charge any additional fee(s) during the pendency of this application except for issue fee  
 Charge fee(s) indicated below, except for filing fee to the above-identified deposit account.

## FEE CALCULATION

## 1. BASIC FILING FEE

## Large Entity Small Entity

| Fee Code (\$)            | Fee Code (\$) | Fee Description        | Fee Paid |
|--------------------------|---------------|------------------------|----------|
| 1001 770                 | 2001 385      | Utility filing fee     | \$385.00 |
| 1002 340                 | 2002 170      | Design filing fee      |          |
| 1003 530                 | 2003 265      | Plant filing fee       |          |
| 1004 770                 | 2004 385      | Reissue filing fee     |          |
| 1005 160                 | 2005 80       | Provisional filing fee |          |
| <b>SUBTOTAL (1) (\$)</b> |               | <b>\$385.00</b>        |          |

## 2. EXTRA CLAIMS FEES FOR UTILITY &amp; REISSUE

|              |                |          |
|--------------|----------------|----------|
| Extra Claims | Fee from below | Fee Paid |
|--------------|----------------|----------|

Total Claims 4 - 20 \*\* = 0 x        = 0  
Independent Claims 2 - 3 \*\* = 0 x        = 0

Multiple Dependent        = 0

## Large Entity Small Entity

| Fee Code (\$)            | Fee Code (\$) | Fee Description                                           |
|--------------------------|---------------|-----------------------------------------------------------|
| 1202 18                  | 2202 9        | Claims in excess of 20 independent claims in excess of 3  |
| 1201 86                  | 2201 43       | Multiple dependent claim, if not paid                     |
| 1203 290                 | 2203 145      | **Reissue independent claims over original patent         |
| 1204 86                  | 2204 43       | **Reissue claims in excess of 20 and over original patent |
| 1205 18                  | 2205 9        |                                                           |
| <b>SUBTOTAL (2) (\$)</b> |               | <b>0</b>                                                  |

\*\*or number previously paid, if greater,  
For Reissues, see above

## SUBMITTED BY

## COMPLETE (if applicable)

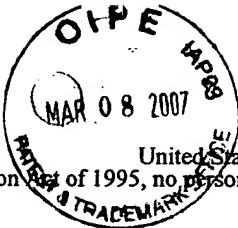
|                                     |                         |                         |
|-------------------------------------|-------------------------|-------------------------|
| Name (Print/Type) Thomas M. Galgano | Registration No. 27,638 | Telephone: 631-582-6161 |
| Signature                           |                         | Date September 7, 2004  |

\*Reduced by Basic Filing Fee Paid

**SUBTOTAL (3) (\$)** 475.00

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

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PTO-2038 (02-2000)

**UNITED STATES PATENT & TRADEMARK OFFICE**  
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**Credit Card Information**

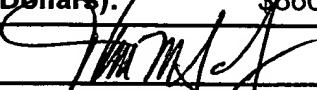
**Credit Card Type:**  Visa     MasterCard     American Express     Discover

**Credit Card Account #:** [REDACTED] 009

**Credit Card Expiration Date:** September, 2004

**Name as it Appears on Credit Card:** THOMAS M. GALGANO

**Payment Amount: (US Dollars):** \$860.00

**Signature:**  **Date:** September 7, 2004

**Refund Policy:** The Office may refund a fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts (37 CFR 1.26). Refund of a fee paid by credit card will be via credit to the credit card account.

**Service Charge:** There is a 50.00 service charge for processing each payment refused (including a check returned "unpaid") or charged back by a financial institution (37 CFR 1.21(m)).

**Credit Card Billing Address**

**Street Address 1:** 300 Rabro Drive

**Street Address 2:** Suite 135

**City:** Hauppauge

**State:** New York

**Zip/Postal Code:** 11788

**Country:** USA

**Daytime Phone #:** 631-582-6161

**Fax #:** 631-582-6191

**Request and Payment Information**

**Description of Request and Payment Information:** CONTINUATION APPLN. OFFICIAL FILING FEE AND OFFICIAL FEE FOR 3-MONTH EXTENSION OF TIME

| <input checked="" type="checkbox"/> Patent Fee | <input type="checkbox"/> Patent Maintenance Fee | <input type="checkbox"/> Trademark Fee | <input type="checkbox"/> Other Fee |
|------------------------------------------------|-------------------------------------------------|----------------------------------------|------------------------------------|
| Application No.<br>09/356,771                  | Application No.                                 | Serial No.                             | IDON Customer No.                  |
| Patent No.                                     | Patent No.                                      | Registration No.                       |                                    |
| Attorney Docket No.<br>1310-2                  |                                                 | Identify or Describe Mark:             |                                    |

If the cardholder includes a credit card number on any form or document other than the Credit Card Payment Form, the United States Patent and Trademark Office will not be liable in the event that the credit card number becomes public knowledge  
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**PATENT**

DOCKET NO.: 1310-2

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT : JOSEPH E. PORCELLI  
SERIAL NO. : 09/356,771  
FILED : SEPTEMBER 7, 2004  
FOR : CAR AND TRUCK BEVERAGE HOLDER  
EXAMINER : NARSCHICA S. MORRISON  
GROUP : 3632

**PRELIMINARY AMENDMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

Preliminary to the initial Office Action, please amend the above-identified application as follows:

IN THE CLAIMS

Claims 1-17. (Previously Canceled)

Claim 18. (Currently Amended) A beverage container holder for round and square beverage containers, comprising:

a rectangular basket having four side walls, each having a top edge border which collectively define an open top end and which, in turn, defines a rectangular opening, at least two of said side walls disposed opposite one another each having at least two openings therethrough disposed beneath said top edge border thereof; and

at least four resilient fingers coupled to said rectangular basket and extending inwardly toward said rectangular opening, said at least four resilient fingers being V-shaped to define a point of a V and having a V-shaped profile when viewed in a vertical plane with the point of the V extending generally towards the center of the rectangular opening, said V-shaped fingers each defining an included obtuse angle therebetween, said at least four fingers each being made of a single unitary member cooperating to resiliently and releasably grasp both round and square beverage containers at the point of said V-shaped fingers, said fingers each depending from one of said top edge borders of said opposite side walls such that they each extend downwardly into a different one of said side wall openings; and

a generally U-shaped hook attached to and extending above said basket, wherein

said rectangular basket, said at least four resilient fingers and said generally U-shaped hook are formed as a single unitary member.

**Claim 19. (Previously Canceled)**

**Claim 20. (Previously Amended) A beverage container holder according to Claim 18, wherein said single unitary member is plastic.**

**Claim 21. (Currently Amended) A beverage container holder for round and square beverage containers, comprising:**

a rectangular tray having a top wall having a pair of spaced-apart rectangular openings; and

at least two sets of four resilient fingers coupled to said rectangular tray and said fingers of each set extending inwardly toward a different one of said rectangular openings, said resilient fingers being V-shaped to define a point of a V and having a V-shaped profile when viewed in a vertical plane with the point of the V extending generally towards the center of the respective rectangular opening, said V-shaped fingers each defining an included obtuse angle therebetween, said at least four fingers of each set cooperating to resiliently and releasably grasp both round and square beverage containers at the point of said V-shaped fingers, said fingers each depending from said top wall of said tray[, said rectangular tray and] said [at least two sets of four] resilient fingers are each formed as a single unitary member; and

a supporting member rotatably coupled to said rectangular tray and being pivotable into a position located below said rectangular opening.

**Claim 22. (Previously Added) A beverage container holder according to Claim 21, further comprising:**

**spring means for biasing said supporting member to said position located below said rectangular opening.**

**Claim 23. (Previously Canceled)**

REMARKS

Reconsideration and withdrawal of the final rejection is respectfully requested in view of the foregoing amendments and the following remarks.

Concerning initially the 112 rejection, by this Preliminary Amendment, the recitation in Claim 21 relative to the two sets of four fingers and the rectangular tray being formed of a single unitary member has been deleted. The resilient fingers are each now defined as being formed "as a single unitary member". Claim 18 has been appropriately amended to define each of the four fingers being made of a single unitary member, as well.

In addition, Claims 18 and 21 have been further amended to define the V-shaped fingers as each defining an obtuse angle therebetween, support for which can be seen in Fig. 1. This obtuse angle allows the fingers to be depressed more easily by the cup being inserted into the holder. As will be discussed in greater detail hereinafter, it is respectfully submitted that the prior art neither discloses nor suggests this novel combination of features.

At the outset, Applicant wishes to bring to the Examiner's attention a recent article in Newsday dated May 31, 2004, in which there was reference to the fact that it was difficult to "try jamming one of those square bottles into your car's

cup holder". This merits attention since it goes to the issue of the present invention that current cup holders are not designed to hold both round and square containers. It is respectfully submitted that it is only through hindsight reasoning that the prior art can be constructed in such a fashion as to duplicate Applicant's invention. In any event, the prior art relied upon by the Examiner does not disclose or suggest the invention as now claimed.

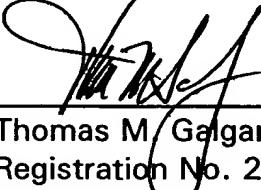
In particular, as noted above, the claims now define the use of V-shaped resilient fingers made of one piece which define an obtuse included angle. On the other hand, the German reference discloses fingerse having an included acute angle. The obtuse angle and the provision of V-shaped fingers in this form allow for a more gradual displacement thereof when the cup is inserted. The use of both the integrally formed resilient fingers, each having a V-shaped profile with an obtuse included angle is neither disclosed nor suggested by the references relied upon by the Examiner either applied alone or in combination.

Finally, Applicant hereby requests a three-month extension of time in which to respond to the outstanding Office Action. Credit Card payment form PTO-2038 in the amount of \$475.00 is enclosed to cover the official filing fee. Any fee deficiency or overpayment may be charged or credited to applicant's Deposit Account No. 07-0130.

Accordingly, reconsideration and withdrawal of the rejection and allowance of the claims at an early date is earnestly solicited.

Respectfully submitted,

JOSEPH E. PORCELLI

  
\_\_\_\_\_  
Thomas M. Galgano  
Registration No. 27,638  
GALGANO & BURKE  
Attorney for Applicant

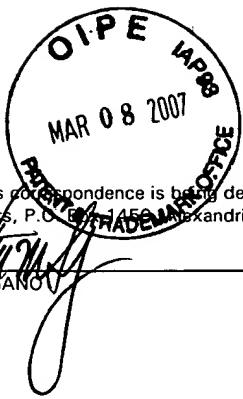
Date: 9/7/04  
300 Rabro Drive - Suite 135  
Hauppauge, NY 11788  
Tel: (631) 582-6161  
Fax: (631) 582-6191

TMG/kdd  
F:\G&b\1310\2\preliminaryamend.wpd

Enclosure: PTO Form 2038



# EXHIBIT A



I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:  
Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313 on the date identified below.

By:

THOMAS M. GALGANO

Date:

3/5/07

PATENT

DOCKET NO.: 1310-2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : JOSEPH E. PORCELLI

SERIAL NO. : 09/356,771

FILED : JULY 16, 1999

TITLE : CAR AND TRUCK BEVERAGE HOLDER

**DECLARATION IN SUPPORT OF  
PETITION FOR REVIVAL OF AN APPLICATION FOR  
PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(A)**

I, Thomas M. Galgano, do hereby declare:

1. I am the attorney of record for the above-identified Applicant in connection with the above-identified application and I submit this Declaration in support of the Petition for Revival of the above-identified application filed concurrently herewith.

2. A final Office Action in the above-identified application issued on March 4, 2004. On September 7, 2004 Applicant submitted a continuation application together with a Preliminary Amendment and the fee for a three month extension of time (copy attached hereto as Exhibit A).

3. Applicant subsequently received a postcard receipt from the U.S. Patent and Trademark Office indicating that the application had been received on September 7, 2004 and assigned Serial No. 10/935,503 (copy attached hereto as Exhibit B).

4. On July 12, 2005, I received a telephone call from Shirley Steel of the U.S. Patent and Trademark Office regarding the continuation transmittal form that we filed. She indicated that it was improperly entered as an amendment and she needed to correct it. I pointed out to her that there was a final Office Action and we filed a continuation with a three month extension which was mentioned in the transmittal papers and in the Preliminary Amendment. She indicated that on this basis, she would try to expedite the handling of this case and pass it through to the Tech Department for processing.

5. I subsequently received in the mail a Notice of Corrected Application number dated July 13, 2005 indicating that the above-identified application was incorrectly assigned to 09/356,771 and that the U.S. Notice assigning it the number

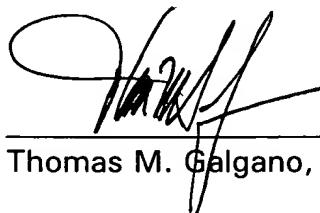
of 10/935,503 had been vacated (copy attached hereto as Exhibit C). The Notice further indicated that a new filing receipt would be mailed in due course.

6. I subsequently had my office conduct status inquiries into this application and on October 31, 2006 our office was informed by Mrs. Holmes (nee Ms. Steel) that she would e-mail Examiner Shamika Sanders Morrison at Art Unit 3632 and tell her that all correct papers were sent in and that they had originally given us an incorrect serial number.

7. In December, 2006 and January, 2007, my office made further inquiries and we were informed that the case went abandoned for failure to use the proper transmittal form and that it would be necessary to file a Petition to Revive.

8. Under the above circumstances, it would appear that although there was a minor mistake with respect to the transmittal form used with filing the RCE application, Applicant's attorney was subsequently informed by the PTO that the papers were sufficient for filing purposes and not until recently was it learned that the PTO had subsequently reached the opposite conclusion.

9. In view of the above, it is believed that Applicant has shown good cause for revival of the application and to accord the filing of the RCE application, and such action at an early date is earnestly solicited.



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Thomas M. Galgano, Esq.

TMG/jgg  
Enclosures: Exhibits A, B, and C  
F:\G&b\1310\2\declarationtmg.wpd

# **EXHIBIT B**



RECEIVED IN MAIL ROOM OF PATENT OFFICE: 17497 U.S. PTO  
10/935503

APPLICANT : JOSEPH E. PORCELLI  
SERIAL NO. : 09/356,771   
FILED : SEPTEMBER 7, 2004 090704  
FOR : CAR AND TRUCK BEVERAGE HOLDER  
EXAMINER : NARSCHICA S. MORRISON / GROUP: 3632

Papers sent:

Utility Patent Application Transmittal for Cont. Appln. (PTO/SB/05)  
with Express Mail Cert. No. EV 235846803 US dated 9/7/04  
Fee Transmittal (PTO/SB/17) dated 9/7/04  
Preliminary Amendment dated 9/7/04  
Credit Card Payment Form PTO-2038 for \$860.00

sent 9/7/2004

dd 9/4/2004(weekend)

Docket: 1310-2

# **EXHIBIT C**



UNITED STATES PATENT AND TRADEMARK OFFICE



UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

| APPLICATION NUMBER | FILING OR 371 (C) DATE | FIRST NAMED APPLICANT | ATTY. DOCKET NO. |
|--------------------|------------------------|-----------------------|------------------|
| 10/935,503         | 09/07/2004             | JOSEPH E. PORCELLI    | 1310-2           |

**Correspondence Address:**

THOMAS M GALGANO ESQ  
GALGANO & BURKE  
300 RABRO DRIVE  
SUITE 135  
HAUPPAUGE NY 11788

07/13/2005

**NOTICE OF CORRECTED APPLICATION NUMBER**

Through an administrative error, the above identified application number was assigned to your application. The correct application number is [09/356,771]. Please refer to the new application number in all future correspondence to the Office.

All notices mailed in application [10/935,503] have been vacated. A new filing receipt will be mailed for [09/356,771] in due course.

The Office regrets any inconvenience this has caused. Please direct any questions or inquiries to Customer Service at (703) 308-1202.

Debra Willard  
Office of Initial Patent Examination



**NEW TRANSMITTAL FORM  
FOR  
REQUEST FOR CONTINUED EXAMINATION**

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